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January 4, 2006

VIA E-MAIL

Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Re: REQUEST FOR REVIEW
Queens Village Day School
Billed Entity Number 210415
CC Docket Nos. 02-6, 96-45
Our File No.: SPFMI 1035846

To whom it may concern:

As counsel for Queens Village Day School ("Queens Village"), we submit this letter of appeal requesting review of the denial of our April 8, 2005 appeal to the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC").¹ That appeal pertained to a group of Notification of Commitment Adjustment Letters ("NCALs" or "Notifications"), all dated February 7, 2005 and pertaining to funding year 2000.²

We respectfully request that this appeal be upheld and the decisions in the NCALs be overturned. Under the unique circumstances described below, it would serve no public interest, and would in fact contravene the very ideals upon which the E-rate program is based, to strictly enforce the E-rate rules against Queens Village, an innocent and unwitting victim of a con artist.

¹ We do not know the specific date on which SLD issued its decision denying Queens Village's appeal. We were informed on or around August 19, 2005 of the *existence* of a decision, but not its *substance*. Despite repeated efforts to obtain a copy of the decision, Queens Village did not receive one until November 8, 2005, which represented the first date on which Queens Village learned the appeal had been denied as well as the basis for the denial. Thus, this was Queens Village's earliest opportunity to begin preparing a response thereto. We will therefore proceed under the assumption that November 8, 2005 is the operative date for time limitation purposes.

² We submitted a second appeal dated May 16, 2005 based upon a second set of NCALs arising out of the same Form 471 application (number 204685). We have not received a decision yet on that appeal. However, the arguments and rationale contained in that appeal letter are identical to those in the April 8 letter, and thus we presume that appeal will be denied on the same basis. For expediency and efficiency purposes, we respectfully request this appeal be considered to address those Notifications as well.

I. THE NCALs

On or about February 7, 2005, SLD issued a total of 33 NCALs to Queens Village, all pertaining to the same Form 471. The FRNs for these 33 Notifications are: 469735; 469736; 469737; 469738; 469739; 469740; 469741; 469743; 469745; 469746; 469748; 469751; 469752; 469754; 469755; 469757; 469766; 469768; 469769; 469771; 469772; 469773; 469776; 469778; 469779; 469780; 469781; 469782; 469783; 469791; 469799; 469802; and 469804. The “adjustment explanation” for these NCALs read as follows:

After a thorough investigation, it has been determined that the funding commitment for this request must be rescinded in full. During the course of an audit it was determined that the applicant did not pay any of the non-discounted portion. FCC rules require applicants to pay the non-discount portion of the products or services purchased with universal service discounts. Applicants that do not pay the non-discount portion more than 90 days after completion of services have violated this rule. In addition to the aforementioned rule violation, the applicant did not have an approved technology plan and was unable to demonstrate that a competitive bidding process had occurred which are also violations of the program rules. Since the program rules have been violated the funding commitment has been rescinded in full.

Based upon the above, SLD is apparently seeking to “recover” from Queens Village \$472,779.03.

Furthermore, on or about March 16, 2005, SLD issued eight additional NCALs to Queens Village. The FRNs for these eight Notifications are: 469758, 469760, 469761, 469764, 469792, 469794, 469796, and 469797. Of these eight NCALs, only one is seeking to “recover” funds from Queens Village – FRN 469758, which seeks an additional \$23,752.80 (for a total of \$496,531.83). Out of these eight Notifications, Queens Village is only appealing FRN 469758, and moreover is only appealing the portion of the Notification seeking funds from it, not the service provider. The “adjustment explanation” for this NCAL was the same as the explanation in the February 7 correspondence (cited above), with the following additional language:

During the audit it was also determined that funds were disbursed for products and/or services that the service provider did not deliver. The audit determined that only \$26,392.00 of the products/services were actually installed, while funding was disbursed for \$36,000 worth of products/services. This resulted in an overpayment of \$12,247.20 (\$36,000-(\$26,392* applicant’s 90 percent discount rate)) to the service provider. FCC rules authorize USAC to disburse funds to service providers for providing supported services to eligible entities. These rules are violated if the service provider receives payment for services and/or products that it did not deliver to the eligible entity. Since the services were invoiced via a SPI, this violation was caused by an act or omission of the service provider because the service provider is responsible for ensuring that it only receives support for services and/or products that it

actually provides to its customers. Therefore, SLD has determined that the applicant is responsible for the violations relating to the products/services actually installed and the service provider is responsible for billing SLD for \$12,247.20 in excess of the products/services actually installed. Accordingly, the SLD will seek recovery of \$23,752.80 from the applicant and \$12,247.20 from the service provider.

II. THE FACTS

A. About Queens Village

Queens Village is a multi-cultural and diverse not-for-profit, § 501(c)(3), non-sectarian, minority-operated educational organization. Founded in 1988, it provides private general educational and child care services for children ages 6 months to 12 years (including those with special needs) in low income, working class and upper middle class income families living in Queens and Brooklyn. It is licensed by the New York City Department of Health and Mental Hygiene and chartered by the New York State Department of Education to provide services to children ages 6 months to 5 years, and it has an after-school program for children ages 5-12 years. From its humble beginnings of approximately 40 students, it has now grown to provide services to over 450 children at three sites. Its mission is to provide excellent child care services designed to cultivate each child's best potential in a safe environment that promotes a love for learning, regardless of the child's economic status or ability to pay.

As a result, many of the children pay reduced tuition rates (sometimes far reduced). An estimated 75-80% of the school's population are from low or no-income families and receive some form of public subsidy. Moreover, because of the precarious economic situation of many of its students, Queens Village provides a transportation service to help bring the children to and from school. This transportation service is free of charge for low or no-income families, many of whom are homeless and live in shelter facilities in Brooklyn and Queens. These children might not otherwise be able to attend a school like Queens Village, because any public funding their parents receive for child care does not include transportation costs, and centers like Queens Village are often located out of walking range from the shelters at which they reside. Queens Village currently has transportation services for approximately 15 shelters, including Carlton House (Salvation Army), Rockaway Family Center and Flatlands Family Residence. It also provides transportation services to group homes, such as Bethany House. These are homes for "wayward" teenage girls who have one or two children themselves.

Queens Village provides community services as well. It provides an employment service to parents in the shelter system willing to work, and it is a BEGIN worksite, providing training to parents interested in a career in childcare. It currently employs 95 full-time and nine part-time staff members. Of those employees, approximately 14 are parents of students, ten of which were considered low-income or on public assistance at the time they began their employment, but they are all now either transitioning off public assistance or completely off of it. Further, of those ten parents, five lived in homeless shelters or group homes at the outset of employment, but they are all now living in their own residences. Some are even beginning the process of purchasing a home.

Queens Village also provides other services to its parents. For example, it provides parenting skills workshops free of charge on an intermittent basis. Past and upcoming topics include child abuse and prevention, proper nutrition, and child abduction prevention. Queens Village is thus an integral part of its community, striving to help not only the children but their families as well.

To make up the cost of all that it provides, Queens Village attempts to secure public grants and also helps families, where appropriate, apply for funding for child care. It participates in the New York City Department of Education Universal Prekindergarten Program, which is publicly funded. It has participated for 14 years in the New York City Administration for Children Services Voucher Program for infant care, day care and after-school services. As many as 200 children in the past two years have been part of this program. Queens Village also receives funding for the children enrolled via their parents' participation in the BEGIN program.³ Further, it received two public grants from the Office of Children and Family Services. The first provides funding to help maintain the after-school care program. The second was extremely prestigious; Queens Village was one of three schools awarded this grant out of more than 300 applicants. Queens Village was awarded a substantial amount of money to renovate a previously unused portion of the building it rents to expand its enrollment to a maximum of 448 students at that site, at least 25% of which must be from low income families. Those renovations have been completed, and Queens Village received its certificates from the building department on December 6, 2005. Its license from the Department of Health for the additional enrollment is being processed and should arrive shortly. Once that occurs, Queens Village will begin expanding its enrollment based on waiting lists it is already maintaining, and will be increasing its staff by at least ten members (to a maximum of 16). Approximately 75-80% of its new students will be from low income families.⁴ Queens Village has at all times adhered to the requirements and guidelines of all these publicly funded programs and has never been found in violation or removed from participation.

Despite its extensive efforts to raise funds, Queens Village is barely able to cover its full operating costs. As its books and records will attest (if you desire, we will set up an appointment for you to review them), its incoming funds essentially pay for payroll costs and bills, such as rent, electricity and telephone service. Indeed, employees sometimes donate school supplies at their own personal expense, out of devotion and self-motivated desire to help the children. Furthermore, Queens Village has no assets, except for the sparse furniture and equipment used to educate the children and the buses it utilizes for its transportation services and school trips (currently seven buses, all of which are being financed). It is therefore generally unable to invest in the sort of equipment other, more advantaged schools can afford.

³ It should be noted that the paperwork for all these programs is not very complicated. Only a simple form is required for each, and it is the parents who must initially obtain qualification for participation in the programs.

⁴ A second aspect of that grant was intended to permit Queens Village to purchase the building in which it is located, but the owner backed out two days before the sale was to be consummated. Queens Village is currently in litigation about this issue, but as of the date of this appeal, no resolution has occurred and they are still occupying the building as a tenant only. The grant will not cover the entire purchase, in any event, and the money will only be provided for the sale; it is not at Queens Village's disposal for any other use.

The school's Executive Director is Vernetta Brown. Ms. Brown has been employed by Queens Village for more than 14 years, all of them as its Executive Director. She began her education career in 1982 as a preschool teacher and obtained her Master's degree in Early Childhood Education in 1985. She became a teacher-director of another preschool in 1985. It has been under Ms. Brown's direction and guidance over the years that Queens Village has so expanded its services and capacity. Throughout her years of service, she has received several community awards. For example, in 1996 she received an award for Outstanding Commitment to Youth and Serving the Community, presented by Project L.I.F.T. Intern Program (a program funded by the New York City Department of Youth Services), and in April 1995 she received a New York State Assembly Citation, presented by Assemblywoman Barbara Clark.

Queens Village's importance to, and high standing in, the community is confirmed by Assemblywoman Barbara M. Clark, in whose District Queens Village is located. As can be seen in the attached testimonial letter, Assemblywoman Clark has worked with Ms. Brown and Queens Village for the past 14 years and has attested to both the special nature of the public service Queens Village performs and the high moral standards of Ms. Brown. (Exhibit A).

B. The Appearance of Robert Pierce and Martin Ganz

In or about late 1999, Ms. Brown received a visit from a purported financial manager named Robert Pierce, looking to offer his services to Ms. Brown and any of Queens Village's employees. During the course of their meeting, Mr. Pierce asked whether Ms. Brown would be interested in upgrading the technology in the school. Ms. Brown expressed a deep interest in this concept, but sadly explained Queens Village did not have the financing for such an endeavor. Mr. Pierce indicated there might nevertheless be a way for Queens Village to obtain these services and said he would put Ms. Brown in touch with a consultant named Martin Ganz (pronounced "Gains").

Mr. Ganz contacted Ms. Brown shortly thereafter and came in for a meeting. He presented a card identifying him as being associated with a firm entitled Educational Technology Partners, or ETP. After asking Ms. Brown some preliminary questions about Queens Village, Mr. Ganz stated the school was eligible for the "E-rate" program. Ms. Brown had never before heard of the program and stated this to Mr. Ganz. He explained the program was paid for out of the universal service charge included in all phone bills and was used to enhance computer technology in schools (including day care programs deemed to be schools by the New York State Department of Education). He also explained that the program did not pay for the entire amount of the technological upgrades but could pay for a substantial portion of it, up to 90%. Ms. Brown stated Queens Village would not even be able to afford the small, non-subsidized portion, given its meager financial resources. Mr. Ganz reassured Ms. Brown that this would not be a problem; the 10% could be covered by Mr. Ganz forfeiting the remaining 10% and/or acquiring grants to pay for the non-discounted portion of the E-rate plan. Mr. Ganz never offered any sort of compensation, whether in the form of money or otherwise, to Queens Village, other than the benefits it would naturally derive from participating in the E-rate program.

Mr. Ganz seemed very knowledgeable about the program, and Ms. Brown was impressed. This sounded like the sort of opportunity meant for Queens Village and its

population, which could not otherwise have access to these sorts of educational resources. Ms. Brown therefore agreed to proceed and utilize Mr. Ganz's services as consultant to navigate Queens Village through the E-rate process.

C. The E-rate Process and Reliance by Queens Village on Martin Ganz

Over the course of the next several months, Mr. Ganz purported to act as liaison between Queens Village and SLD, making sure (from Queens Village's perspective) the school executed all the necessary forms and documents and complied with all program requirements. He first toured the school with Ms. Brown, discussing the technological upgrades that would best enhance the school and its teaching capabilities. He prepared a "technology plan" outlining the vision for Queens Village with regard to integrating the sought-after technology into the school's curriculum, which included specific goals and strategies. Mr. Ganz also selected the service providers for the work pursuant to the E-rate program.

At all times, Queens Village relied upon Mr. Ganz and his representations regarding the requirements for the E-rate program. Queens Village was completely unknowledgeable regarding the E-rate program and had no reason to suspect that anything untoward or improper was occurring throughout the process. Indeed, when it received the September 29, 2000 Funding Commitment Decision Letter, notifying it that essentially all of the requested funds had been approved at the 90% level, Queens Village believed that everything was proceeding properly and appropriately.

During the installation process, Mr. Ganz continued to place himself in the primary position, stating he would take care of all administrative issues in this regard, including billing and supervising the installation of the new technology. Queens Village was grateful for his help; as a professional in the computer and technology field, it believed he would better be able to tell whether the installation was proceeding in accordance with the authorizations under E-rate.⁵ Personnel from Queens Village would occasionally check on the progress, but they were more concerned with making sure they were providing proper care to their students; they did not have the manpower or expertise to devote to constant oversight of the installation process. Again, nothing during this process gave any indication of impropriety; the installation appeared to be proceeding according to plan.

At no time during the entire process did Queens Village receive any money directly from USAC; all payments for services went directly to the service providers. The only possible exception to this was a reimbursement for some of Queens Village's long distance service through AT&T, which Queens Village understood to be one of the benefits of being enrolled in the E-rate program.⁶ Furthermore, at no time did Mr. Ganz (or any service provider) compensate Queens Village in any way. Finally, Queens Village did not pay Mr. Ganz or any service

⁵ Queens Village might be able to make this determination for some of the more visual aspects of the installation (e.g., the phone system), but would they really know how much wiring, for example, was installed in the ceiling and whether it was the proper and necessary amount?

⁶ We believe this reimbursement was in the amount of \$855.31, was obtained via filing a Form 472 and is reflected in FRN 469804.

provider for the non-discounted portion; as Ms. Brown had explained to Mr. Ganz, Queens Village did not have the resources for such payments.

D. The April 2004 Audit and Subsequent Determination

On or about April 14, 2004, Ms. Brown was contacted by SLD via letter regarding an audit they sought to conduct. The audit was in fact conducted on April 28, 2004 by Ms. Christina McCrone, a Senior Auditor and Fraud Specialist, accompanied by Ms. Larrisa Goodin, Staff Auditor. Ms. Brown provided to them all the documentation she possessed regarding Queens Village's E-rate funding and participation. She also gave them a tour of the Queens Village's facilities to show them how the technology was being put to use for the benefit of the students.

At some point during the audit, Mses. Brown, McCrone and Goodin sat down to discuss how Queens Village came to participate in the E-rate program, and specifically about its relationship with Mr. Ganz and how that came to fruition. Ms. Brown was completely forthright with the auditors, explaining the entire story and the arrangement Queens Village made with him. It was during this portion of the audit that Ms. Brown learned for the first time that Queens Village may have been in violation of one or more of the E-rate program rules.

Ms. Brown was stunned. She explained to Ms. McCrone that she believed she had complied with all rules and regulations, and that she had relied on Mr. Ganz to take her through the process, since she was not knowledgeable about it. At this time, Ms. McCrone revealed to Ms. Brown that SLD was investigating Mr. Ganz, because they believed he may have done exactly the same thing with other organizations similar to Queens Village in New York and California. Mr. Ganz apparently preyed on private, not-for-profit, minority-owned and/or disadvantaged schools and day care centers, taking advantage of their inexperience and naïveté regarding the system to exploit the E-rate program. Essentially, he was a con artist and had used Queens Village. Ms. McCrone further revealed to Ms. Brown that Mr. Ganz's current location was unknown; he had apparently disappeared and may have been operating under a new name.

Ms. Brown was flabbergasted. She had no idea this was occurring and had been completely taken in by Mr. Ganz. (He must have been quite an accomplished con artist to have been able to pull this scam on many organizations and have repeatedly fooled USAC in the process.) Ms. Brown emphasized to Ms. McCrone the lack of any illicit intent on the part of Queens Village. She explained she and Queens Village had acted in good faith and good conscience the entire time; perhaps her trusting nature and ignorance about the process were her downfall, but neither she nor Queens Village ever believed or intended anything improper. Ms. McCrone stated she believed Ms. Brown – she could see from her expression and demeanor she was being truthful.

At the end of the meeting, Ms. McCrone asked Ms. Brown to put her explanation into writing. Ms. Brown did so immediately, and sent the letter to Ms. McCrone that very day. Ms. Brown was perfectly forthright in that letter, just as she had been during the audit meeting.

On May 28, 2004, based upon Ms. McCrone's audit visit and review of documentation, the SLD Internal Audit Division ("IAD") issued a beneficiary audit report to Mr. George

McDonald, Vice President of SLD, regarding Queens Village. In that report, IAD concluded Queens Village had violated the E-rate program requirements in the following ways:

- It had not been personally involved in the competitive bidding process, but rather had allowed Mr. Ganz to perform that function for them.
- It did not sign contracts with the ETP-selected vendors.
- It did not receive any service provider bills directly, nor did it personally track expenditures; all bills went to ETP.
- It did not pay the undiscounted portion.
- The technology plan was never approved by an SLD-certified approver.

IAD also determined SLD was invoiced by service providers for “\$139,685.11 for equipment that was subjected to inflated pricing and services that were not provided.” However, SLD apparently determined that this was a matter between SLD and the service providers, not Queens Village, and it would seek recovery of that money directly from those providers.

Significantly, IAD *also* made the following findings:

- Queens Village had a technology plan, which “established clear goals and strategies (including professional development) for using information technology to improve education.”
- The SPI forms appeared to be accurate and complete.
- The discount percentage was accurately reflected on the SPI forms.
- The total amount disbursed via the SPI forms did not exceed the total amount committed per the FCDL.
- With the exception of the additional money disbursed, which SLD would be seeking to recover directly from the service providers and for which it had no intention of holding Queens Village responsible, there was no indication that the remaining cost was inappropriate for the products and services Queens Village actually received.
- Queens Village was using the equipment provided pursuant to the E-rate program “for educational purposes and in accordance with the program guidelines.”
- Queens Village was subjecting the E-rate funded equipment “to the same physical and internal controls that were required for the safeguarding of [its] other assets.”

On February 7 and March 16, 2005, SLD issued the instant NCALs, seeking to “recover” a total of \$496,531.83 from Queens Village. As described in more detail in Section I, the

specific bases for this demand are Queens Village's failure to: (1) pay any of the non-discounted portion; (2) have an approved technology plan; (3) demonstrate that a competitive bidding process had occurred.

Queens Village was shocked to receive these Notifications. Clearly, Queens Village was a naïve but innocent pawn in Mr. Ganz's scheme, and Ms. McCrone had expressed her belief in this fact. Moreover, it recognized that enforcement of these NCALs would likely result in closure of the school, which would certainly benefit no one, including USAC; indeed, not even closure of the school would permit this substantial payment to be made to USAC. Therefore, Queens Village sought to appeal these decisions.

In accordance with the pertinent rules and protocols, Queens Village first appealed to SLD.⁷ The school outlined all the relevant facts and explained why, in the present circumstances, it would not only serve no useful purpose to strictly enforce the E-rate rules but would in fact perform a public disservice. SLD apparently ignored all of the special considerations and would not look beyond the four corners of the rules. It therefore denied the appeal on the basis that Queens Village failed to: (1) pay any of the non-discounted portion; (2) have an approved technology plan; and (3) demonstrate that a competitive bidding process had occurred – all without looking at *why* and *how* that occurred, or what the practical effect of its ruling would be.

Queens Village is now appealing to the FCC, with the hope that those critical factors, as explained in the next section, are heard and considered. The FCC is in a far better position to look beyond its own rules to their underpinnings and goals, something SLD was perhaps not authorized to do.

III. DISCUSSION

The FCC

has general authority to suspend, waive, or amend its rules on its own motion, for good cause. Courts have held that good cause exists ... if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. ... Precedent makes clear that, "a regulation which is not required by statute may, in appropriate circumstances be waived and must be waived where failure to do so would amount to an abuse of discretion." Congress did not specify the procedures that the [FCC] must use in implementing the universal service mechanism for schools and libraries, thus the procedures are not "required by statute."

⁷ Within that appeal, Queens Village respectfully requested a copy of all documents relating to its E-rate application and funding, including all forms filed, correspondence, invoices received from service providers, *etc.* To date, Queens Village has still not received a response to this request. It therefore respectfully reiterates this request.

Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, Order in CC Docket Nos. 97-21 and 96-45, FCC 99-292 at para. 6 (1999) (footnotes and citations omitted) (“Order FCC 99-292”) (Exhibit B).

As the above administrative decision makes clear, the FCC is empowered to implement a limited waiver of its E-rate rules if good cause exists, *i.e.*, special circumstances warrant the deviation, and the deviation will serve the public interest. As demonstrated below, we believe the unique facts of the instant situation meet this standard.

The purpose behind the E-rate program is to assist schools and libraries to obtain affordable telecommunications and internet access. The program recognizes that certain schools may require more assistance than others depending on the financial abilities of their students, as evidenced by the sliding scale of discount levels. However, the ultimate goal is to ensure that children have access to the best possible education, regardless of their poverty level – even children as disadvantaged as those attending Queens Village.

As should be apparent from the recitation of facts in Section II, this ultimate goal was the sole motivating factor for Queens Village. It was excited at the possibility that its students could have access to such advanced educational tools, as it knew it could never provide these tools to them by itself. When it realized it could not even afford the discounted portion, it immediately provided that information to Mr. Ganz. Queens Village relied on Mr. Ganz in good faith when he explained that alternate arrangements could be made to pay for the non-discounted portion; it had no reason to suspect he was a fraud. Mr. Ganz was apparently an accomplished con artist, and Queens Village was completely taken in by his pitch. It certainly had no intent to violate or evade any of the requirements of the E-rate program.

It is important to note that Queens Village is a reputable school that performs a valuable public service, not only by the fact that it educates children but also because it goes out of its way to make sure that educational opportunities are afforded to children who might otherwise not have such a chance, due to their family situation and economic status. To its knowledge, there are no other such daycare/after-school centers in its area that fill this particular niche (especially given its unique free transportation service). It has never before been implicated in any wrongdoing, and it regularly obtains public funds from other sources to support its services. This one aberration can only be attributed to its lack of knowledge about E-rate and its trusting nature, which were exploited by Mr. Ganz to his apparent benefit. While perhaps Queens Village could have attempted to monitor the situation more closely, it had no reason to suspect that Mr. Ganz was being less than straightforward regarding the requirements of the program. Queens Village was an unwitting dupe.

Assemblywoman Barbara Clark attested to all of these facts, based upon her personal experience of 14 years working together with Queens Village and Ms. Brown. Assemblywoman Clark also expressed her personal belief that there was no intent to engage in any wrongdoing, and that enforcing the decision of SLD would be against the public’s interest. As Assemblywoman Clark aptly noted, it is important “to not just uphold the letter of the law, but the spirit of the law as well.”

Although Queens Village in no way seeks to minimize the importance or necessity of the E-rate program rules, it is important to also analyze the nature of the asserted violations in this case and their overall impact on the program and Queens Village's receipt of funding. With regard to the technology plan, while IAD concluded it had never been approved, it also found that it did exist, and, moreover, that it "established clear goals and strategies (including professional development) for using information technology to improve education." It therefore appears that, as a substantive matter, the technology plan met the essential requirements necessary for approval, and thus the underlying goal behind the approval requirement was met.⁸ In addition, with regard to the portion of E-rate funding that pertains to reimbursement for local and long distance telephone service, a technology plan is not necessary. Therefore, as to that aspect, this alleged violation is certainly *de minimis*.⁹

Next, IAD concluded Queens Village could present no evidence that it engaged in the competitive bidding process. As we understand it, the purpose behind this requirement is to ensure the technological services are provided in the most cost-effective manner possible. The connection between these two concepts is reasonable – the open bidding process would seem to give an applicant the most choices and thus be in the best position to make a cost-effective selection. However, the absence of the bidding process does not automatically mean that Queens Village is guilty of producing cost-ineffective results. To the contrary, with the exception of the additional money disbursed,¹⁰ IAD did not indicate in its audit report that the remaining cost, *i.e.*, the amount it is seeking from Queens Village, was inappropriate or overly expensive for the products and services Queens Village actually received.

This leaves Queens Village's failure to pay the undiscounted portion. Again, Queens Village stresses that it was ignorant of this requirement and never knowingly or intentionally evaded the program's obligations. But beyond this fact, it is important to analyze the rationale behind this obligation. According to the FCC, this requirement helps ensure efficiency in the program, because personal accountability will help avoid schools engaging in unnecessary and wasteful expenditures. *See, e.g., Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470)*, Section I (May 2003) ("FCC rules require applicants to pay their share to ensure efficiency and accountability in the program"). However, the audit report is noticeably lacking any evidence,

⁸ Of course, we are not advocating that the FCC should regularly ignore or waive the requirement to have a technology plan approved (or, for that matter, any of the requirements at issue in the instant situation). Rather, Queens Village believes that the special circumstances here (*e.g.*, its genuine belief that it was complying with its obligations due to the nefarious and misleading influence of a con artist), combined with the public interest in continuing to permit Queens Village to perform the good and unique work it accomplishes, warrant a limited exception.

⁹ Moreover, there does not appear to be any question that Queens Village has paid the undiscounted portion of its phone bills to their reputable providers (AT&T and Bell Atlantic/Verizon), for which it received phone service. Should the FCC wish to see evidence of such payments, please let us know.

¹⁰ SLD has already indicated it will be seeking to recover this money directly from the service providers and has no intention of holding Queens Village responsible for this violation. Moreover, IAD indicated in its report that the SPI forms appeared accurate and complete, including the fact that the proper discount percentage was used and the requests never exceeded the committed funding amount. Mr. Ganz thus apparently fooled SLD, an agency experienced in such matters. Accordingly, it is even more understandable that Queens Village would be so fooled.

observations or conclusions indicating that Queens Village's E-rate funded purchases were in any way unnecessary or wasteful. To the contrary, there was an explicit finding that Queens Village was using the equipment "for educational purposes and in accordance with the program guidelines." This finding confirms Ms. Brown's expressed sentiment that all she wanted was to provide this wonderful educational opportunity for the school's students, who so rarely get special opportunities, despite the extraordinary efforts undertaken by Queens Village. No one at Queens Village personally benefited from the funding; the true recipients and beneficiaries were the students, most of whom would not even be able to see, let alone use, such technology outside the school's setting.

Far more is at stake here than a philosophical debate regarding rules versus purpose and intentions. The real-life costs are high – imposing repayment pursuant to the NCALs would most likely result in closing the school, as Queens Village does not have \$500,000. This penalty far outweighs the transgression of being too trusting. It would hurt the children more than anyone else and could even foreclose some of them from having access to any such services. It would also result in 95 full-time and nine part-time employees, some of whom only recently pulled themselves out of the hole of public assistance, suddenly finding themselves unemployed. There can certainly be no public interest in closing the school. It would not even substantially benefit USAC financially, given Queens Village's limited assets.

We recognize the import of Queens Village's request, and it is not being made lightly or with a cavalier attitude. Nonetheless, it would not be the first time the FCC determined a waiver of its rules was in the best public interest. In *Order FCC 99-292, supra*, the FCC determined that a limited waiver of a portion of its competitive bidding rules and its funding priority rules was justified on the facts and circumstances described therein. Although the specific situation was different than the instant one, the underlying rationale is equally applicable here: that the unique circumstances and public interest warranted the waiver. The FCC also determined that a limited waiver would not be "detrimental to the operations of the schools and libraries support mechanism." *Id.* at par. 12. The same is true here. The waiver sought is based on unusual and (one would hope) rarely-occurring circumstances that should not affect the vast majority of schools or libraries, nor should it impact SLD's ability to implement the E-rate program.¹¹

The true transgressor in this situation is Mr. Ganz. After all, Queens Village never received so much as a penny from SLD (other than the limited reimbursement for some of its long distance service). Queens Village only received the equipment and services pursuant to E-rate, which IAD found to be utilized by Queens Village in accordance with program guidelines. If the FCC believes someone must be held accountable for the rule violations asserted by IAD, it is certainly within the FCC's power to pursue Mr. Ganz for the funds instead of Queens Village. Indeed, it appears as though SLD made some attempts in this regard, as Queens Village was informed by Ms. McCrone that SLD was investigating Mr. Ganz but he had apparently disappeared. Although this evidently makes it more difficult to hold Mr. Ganz responsible for

¹¹ It is also worth noting that these events occurred during only the second funding year, when the E-rate program was hardly as well-known or publicized as it is today. It is therefore even more understandable that Queens Village believed Mr. Ganz's representations regarding the program.

his duplicitous actions, his missing-in-action status underscores and emphasizes his culpability, in stark contrast to Queens Village.

Although its reliance on Mr. Ganz may have resulted in violations of E-rate program rules, Queens Village's heart and intentions were at all times in the right place. It is regrettable to think that, despite the purposes of E-rate, a facility like Queens Village would still have fallen by the wayside, because its population is so disadvantaged that not even the 90% subsidy would have sufficed. Thus, despite the possible violations, when looked at overall, the purposes of the E-rate program were met. It would be truly unfortunate to allow this one incident to blemish Queens Village's otherwise stellar reputation and cause its destruction. That is simply too great a punishment – not only to Queens Village but to all those it serves.

IV. CONCLUSION

Under the unique circumstances presented above, it would be a miscarriage of justice to strictly enforce the E-rate rules, resulting in a well-intentioned educational institution being likely forced to close (with SLD's "debt" still remaining largely unsatisfied). We respectfully request, therefore, that this appeal be upheld and the decisions in the NCALs be overturned.

We certainly welcome any discussion in an attempt to resolve this matter; perhaps an intermediate solution can be reached (*e.g.*, an agreement to repay to 10% undiscounted portion on a payment schedule Queens Village can meet). You may contact the undersigned in this regard.

Respectfully submitted,

GORDON & REES LLP

A handwritten signature in cursive script, appearing to read "Diane Krebs", enclosed within a large, loopy circular flourish.

Diane Krebs

cc: Ms. Vernetta Brown

EXHIBIT A



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

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Assemblywoman 33rd District

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Mr. Kevin J. Martin
Chairman, Federal Communications Commission
445 12th Street, SW
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CHAIR
Committee on Aging

COMMITTEES
Children & Families
Education
Labor

COMMISSIONER
Education Commission of the States

December 15, 2005

Re: Queens Village Day School / E-rate program
CC Docket No. 02-6

Dear Mr. Martin:

I am writing an urgent appeal to the Federal Communications Commission to consider all of the circumstances under which the above-referenced matter took place. Without your special consideration, the Queens Village Day School will be forced to close, denying approximately 450 children access to quality day care—a service that is scarce in this community. Queens Village Day School's commitment to ensuring that children are given the best opportunity for educational growth—regardless of economic status or ability pay—make it a particularly special educational organization. The vast majority of its students (both in the preschool and after-school programs) are from low income families and receive some form of public assistance. Moreover, the fact that Queens Village Day School also provides free transportation for its youngsters makes it an all the more cherished institution.

During my entire tenure as Assemblywoman for the 33rd Assembly District in Queens, New York, where the Queens Village Day School is located, my focus has been on education—from early childhood to higher education. Paired with programs that work to strengthen families and communities, one of my greatest concerns continues to be addressing the need for both quality and accessible day care. Thus, I have worked to influence day care policy and resources in the state legislature. Through these efforts I came to know Ms. Brown and the Queens Village Day School family. Our working relationship has spanned fourteen years out of the nineteen years that I have served as the Assemblywoman.

I have found Ms. Brown's commitment to the education and betterment of children to be unparalleled. She is a self-sacrificing individual who is committed to the growth and development of children, especially youngsters with the least access to resources necessary to help them achieve as they advance in their educational careers. Even in experiences outside her

letter to Mr. Kevin J. Martin/FCC Chairman
December 15, 2005
page 2 of 2

work life, namely her involvement in her church, she is held in the highest regard by fellow congregants. With such an exemplary history, I was extremely dismayed to learn that an unintended violation of the E-rate program's administrative rules had created the potential demise of the well-established Queens Village Day School.

To the best of my knowledge, there was no intentional or deliberate wrongdoing on the part of Vernetta Brown or the Queens Village Day School regarding the E-Rate program. My understanding of the events that took place was that Ms. Brown was presented an opportunity by an Educational Technology Partners (ETP) consultant to register her institution for a **government funded program** which would in turn offer her students access to technology that they otherwise would not have. According to Ms. Brown, the ETP consultant, Mr. Martin Ganz, pledged to assist her with the entire procurement process. So it appears that it is with Mr. Ganz and his colleagues that culpability rests. Presenting themselves as experts in the process, it was not unreasonable for the Queens Village Day School and Ms. Brown to put their trust in the consultants who claimed to be both knowledgeable and familiar with how to successfully navigate a seemingly complicated process.

As a state legislator, I recognize the need to not just uphold the letter of the law, but the spirit of the law as well. The purpose of the E-rate program is to bridge the technology gap by helping schools afford telecommunications and internet services—particularly schools serving low-income families. Federal regulations allow the FCC to waive rules if good cause is shown. In this case, it would be against the public's interest to uphold the decision of the Schools and Libraries Division (SLD) because to do so would effectively result in the school's closure. It would be a drastic and absurd result if in the quest to close the digital divide, improve education and bring technology to underserved students the entire school is forced to close under the mighty weight of complete repayment for this project. This is simply too great a penalty for Queens Village Day School and for this community—especially since the underlying purposes of the E-Rate program were met and the only real transgression by Ms. Brown and the school was that of misplaced reliance.

I respectfully request that an arrangement be structured to allow the Queens Village Day School to pay in installments the non-discounted portion of the funding which amounts to 10% of the total cost of the equipment. Please do all that is within your power to prevent the downfall of this much-needed institution.

Please feel free to contact me if you need any further information. Thank you for your attention and help in this matter.

Sincerely,



Barbara M. Clark
Member of Assembly

EXHIBIT B

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of)	
)	
Changes to the Board of)	CC Docket No. 97-21
Directors of the National Exchange)	
Carrier Association, Inc.)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

ORDER

Adopted: October 8, 1999**Released: October 8, 1999**

By the Commission:

I. INTRODUCTION

1. Pursuant to section 1.3 of the Commission's rules,¹ we find good cause to grant, on our own motion, a one-time, limited waiver of four Commission rules pertaining to the schools and libraries universal service support mechanism in cases where discount funding commitments were made or disbursed in violation of our rules. We also direct the Administrator of the universal service support mechanisms (the Universal Service Administrative Company or USAC) to waive one of its procedural rules that applies to the funding application process. These limited waivers will apply only to the first funding year of the support mechanism and will affect only those commitments identified by USAC that are the subject of this Order.² This Order will allow the affected applicants, as determined by USAC, to retain their committed funds during the first funding year.³

II. BACKGROUND

2. The Administrator, through standard audit and review processes, recently discovered that it awarded discount funding to a small number of year one applicants in

¹ 47 C.F.R. § 1.3.

² The first funding year of the schools and libraries universal service support mechanism was January 1, 1998, through June 30, 1999.

³ We note that USAC discovered additional applications where disbursement of funds for these applications would violate certain requirements of the Communications Act of 1934, as amended (the Act). These adjustments are the subject of the Commission's companion order to this Order, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291 (rel. October 8, 1999) (*Statutory Adjustment Order*).

violation of federal statutes, Commission rules pertaining to the schools and libraries discount support mechanism, and a USAC procedural rule that applies to the discount mechanism's application process. USAC identified the affected applications as part of its internal post-commitment management review of applications. In addition, USAC contracted with independent auditors for reviews of its internal controls and, during the course of one of those reviews, USAC further defined and quantified the affected applications.⁴

3. USAC discovered applications in two general categories where commitments or disbursements of funds would violate our rules: (1) applications that did not conform with the Commission's competitive bidding rules;⁵ and (2) commitments that, if funded, would violate the Commission's funding priority rules.⁶ First, the competitive bidding rules were established generally to promote competition among service providers and ensure that schools and libraries benefited from the competition. The specific competitive bidding rules violated here include the commitment or disbursement of funds for applications that: (i) failed to secure a signed contract prior to filing the FCC Form 471⁷ with USAC indicating which services were ordered under the discount mechanism, as required under section 54.504(c) of the Commission's rules;⁸ (ii) failed to seek competitive bids and post service requests on the Administrator's website for 28 days prior to entering into a contract or taking services pursuant to a tariff, as required under sections 54.504(a) and 54.504(b)(4) of the Commission's rules;⁹ and (iii) failed to calculate properly the service periods for which applicants were eligible for support, as required under sections 54.504(a) and 54.504(c) of the Commission's rules.¹⁰

4. Second, certain commitments were issued contrary to Commission rules regarding funding priority. The funding priority rules were established to ensure that the neediest schools and libraries received priority for discounts on internal connections. For

⁴ In the first funding year, USAC committed \$1.7 billion in funding for the schools and libraries mechanism. Of this amount, approximately \$14 million was committed in violation of Commission rules and USAC procedures. Thus, \$14 million in commitments that constitute Commission rule and USAC procedural violations divided by a total commitment of \$1.7 billion is equal to .0082 or an error rate of .82%.

⁵ See 47 C.F.R. §§ 54.504(a), 54.504(b)(4), and 54.504(c).

⁶ 47 C.F.R. § 54.507(g)(1)(iii).

⁷ FCC Form 471, Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806.

⁸ As of September 22, 1999, funds were committed to 137 applications in violation of this Commission rule.

⁹ As of September 22, 1999, funds were committed to 188 applications in violation of this Commission rule.

¹⁰ As of September 22, 1999, funds were committed to 78 applications in violation of this Commission rule.

the first year of the mechanism, USAC determined, based on the discount funding priority rule found in section 54.507(g)(1)(iii) of the Commission's rules, and an estimate of available funds, that only those schools and libraries eligible for discounts of 70 percent or more would be eligible for discounts on internal connections. USAC discovered that it committed funding to underwrite discounts for internal connections for some institutions with a discount eligibility of less than 70 percent.¹¹

5. Finally, in addition to Commission rule violations, USAC discovered that commitments were made with respect to certain applications that did not conform to USAC's procedure, which requires that applicants seeking discounts on pre-existing contracts submit an FCC Form 470¹² at least 28 days prior to filing an FCC Form 471, even though such applicants are exempt from the Commission's competitive bidding rules.¹³

III. DISCUSSION

6. The Commission has general authority to suspend, waive, or amend its rules on its own motion, for good cause.¹⁴ Courts have held that good cause exists to waive a Commission rule if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹⁵ We find that special circumstances warrant a deviation from the rules identified above of the schools and libraries universal service support mechanism for commitments or disbursements made with respect to year-one applications that failed to comply with the Commission's regulations described above. Precedent makes clear that, "a regulation which is not required by statute may, in appropriate circumstances be waived and must be waived where failure to do so would amount to an abuse of discretion."¹⁶ Congress did not specify the procedures that the Commission must use in implementing the universal service mechanism for schools and libraries, thus the procedures are not "required by statute." We find, as described below, that special circumstances justify a limited waiver of the specific rules described in this Order for affected applications for which commitments or disbursements were made during the first funding year, as identified by

¹¹ As of September 22, 1999, funds were committed to 160 applicants in violation of this Commission rule.

¹² FCC Form 470, Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806.

¹³ See Universal Service Program Description, January 1998. As of September 22, 1999, funds were committed to 134 applications in violation of this USAC procedure.

¹⁴ 47 C.F.R. § 1.3.

¹⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (noting that the "combination of a general rule and limitations is the very stuff of the rule of law, and with diligent effort and attention to essentials, administrative agencies may maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility").

¹⁶ *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1207 (5th Cir. 1995).

USAC. These special circumstances also justify our direction to USAC to waive its procedural rule on a similarly limited basis. We stress that the waivers granted herein are limited in scope, applying only to affected applications for which commitments or disbursements were made during the first funding year, as determined by USAC.

7. Specifically, we are persuaded that, for several reasons, the affected applicants and providers in the first year of the schools and libraries support mechanism may have reasonably relied on the funding commitments applicants received from USAC. First, the commitment letter did not expressly state that USAC or the Commission may seek adjustment of the commitments after an applicant's receipt of the funding commitment. Rather, the discount mechanism application form requires certification and acknowledgement by the applicant of the statement that "you may be audited to ensure that the information you are providing in this form is accurate and that you are abiding by all of the relevant regulations."¹⁷ This statement suggests that compliance with all regulations is a condition for receipt of a discount funding commitment, but may have left some applicants without sufficient notice as to possible adjustment of their funding commitments should program violations be discovered after their receipt of funding commitments or subsequent disbursement.

8. To prevent such ambiguity in the future, USAC has revised its application form certification to reflect the potential for adjustment of commitments after commitment letters have been issued.¹⁸ Further, USAC has revised the language of its funding commitment decision letters to put applicants and service providers on notice of the potential for subsequent adjustment of any commitments or funding issued in error.¹⁹

¹⁷ FCC Form 471, Schools and Libraries Universal Service, Services Ordered and Certification, OMB 3060-0806.

¹⁸ Beginning in the third funding year, the revised application form requires certification from the applicant that the applicant has complied with all program rules and acknowledges that "failure to do so may result in denial of discount funding and/or cancellation of funding commitments." *Id.*

¹⁹ USAC funding commitment letters contain the following language:

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the universal service mechanisms for schools and libraries. FCC Form 471 Applicants who have received funding commitments continue to be subject to audits and other reviews that SLD or the Commission may undertake periodically to assure that funds have been committed and are being used in accordance with all such requirements. If the SLD subsequently determines that its commitment was erroneously issued either due to action or inaction, including but not limited to that by SLD, the Applicant, or service provider, and that the action or inaction was not in accordance with such requirements, SLD may be required to cancel these funding commitments and seek repayment of any funds disbursed not in accordance with such requirements. The SLD, and other appropriate authorities (including but not limited to USAC and the FCC) may pursue enforcement actions and other means of recourse to collect erroneously disbursed funds.

The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from

Thus, each applicant and service provider in funding years subsequent to year one is on notice that funding commitments and disbursements, if in violation of federal statutes, Commission regulations, or USAC procedures, will be subject to adjustment.

9. Second, applicants were required to receive recurring services prior to June 30, 1999, and non-recurring services by September 30, 1999.²⁰ Accordingly, applicants may have necessarily relied on the commitment of funding to take service and incur costs to complete work within the prescribed regulatory time frame. Providers, too, may have necessarily relied on the commitment of funding to provide service and complete work within the prescribed time frame. Moreover, as mentioned above, applicants and service providers may not have received sufficient notice as to the possible adjustment of the commitments.

10. Third, while the applicants at issue here failed to submit applications fully compliant with our rules, this was the first funding year of USAC's administration of the new schools and libraries support mechanism. Unlike schools and libraries whose applications were rejected outright for failure to meet all applicable rules of this new and sophisticated regulatory initiative, the inexperienced applicants affected here may have reasonably relied on USAC's commitment letter as confirmation that their applications did in fact comply with Commission rules. Under such circumstances, involving the first funding year of the support mechanism, and reasonable applicant reliance on regulatory action, precedent supports a limited regulatory waiver.²¹

11. Finally, we find that waiver of the Commission rules will protect the service providers involved from the obligation to repay the discount funding reimbursements they have received, and/or adjustment of the discount funding reimbursements they are expecting from USAC. It is unlikely that these providers could have informed themselves about the status of an applicant's compliance with applicable

contributing telecommunications companies.

²⁰ Section 54.507(d) requires schools and libraries to file applications for discounts each year. 47 C.F.R. § 54.507(d). The schools and libraries mechanism operates on a calendar year cycle (July 1 – June 30) but, for the first year of the mechanism only, the eighteen month period from January 1, 1998 to June 30, 1999, was considered a funding year. 47 C.F.R. § 54.507(b). In the *Tenth Reconsideration Order*, the Commission extended the deadline for the receipt of non-recurring services from June 30, 1999 to September 30, 1999. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983, 5991-92 at para. 17 (1999).

²¹ See *To the Secretary of Health, Education, and Welfare*, September 15, 1971, 51 Comp. Gen. 162 (1971); *To Mr. Secretary: Apr 19, 1972*, B-164031(1), 1972 WL 6886 (stating that there may be exceptional circumstances under which an agency is not required to seek full recovery where it has erroneously provided grant funds to ineligible recipients that failed to comply with the agency's regulations). Although the universal service support mechanism for schools and libraries is not a grant program, these cases provide an analogy to the circumstances here. See also B-176994, *In the Matter of Chicago Association for Retarded Children; Reimbursement Under Special Food Service Program for Children*, Feb. 12, 1976, 1976 WL 8871 (C.G.) (citing occasions where the Comptroller General "agreed to permit a settlement not strictly authorized by . . . program regulations based on an unusual set of circumstances in which the administrative agency itself was partially responsible either for the failure to comply with the regulations or with the fact that expenses were incurred in violation of the regulations").

regulations absent notification by USAC, thus constituting special circumstances, in addition to those discussed above, justifying a waiver of our rules for the first year.²²

12. We are also persuaded that, in addition to affording relief to applicants that may have reasonably relied on their commitment letters, a limited waiver is not detrimental to the operation of the schools and libraries support mechanism. Specifically, the limited waiver announced in this Order applies only to the specific rules described in this Order for affected applications for which commitments or disbursements were made during the first funding year. In addition, as a result of additional internal controls that USAC has implemented, and the experience gained by applicants in the first funding year, we expect considerably fewer non-conforming applications in the second funding year. Moreover, new language in the commitment letters makes clear to applicants and service providers that funding committed or disbursed that is not compliant with federal law or rules must be withheld or returned. Accordingly, for these reasons, we believe the limited waiver of our rules in the first funding year will not impact the integrity of the funding mechanism for subsequent years.

13. Based on the special circumstances described above, we find it appropriate and in the public interest to grant a one-time, limited waiver of the Commission rules described in this Order, in order to permit commitment and disbursement of funds during the first funding year where such commitment and disbursement would otherwise violate the Commission's rules. Accordingly, for those cases in which USAC's commitment or disbursement of funds during the first funding year would result in a violation of the following rules, we grant a limited waiver of sections 54.504(a), 54.504(b)(4), and 54.504(c), relating to the Commission's competitive bidding rules,²³ and section 54.507(g)(1)(iii), relating to the Commission's funding priority rules.²⁴ We further direct USAC to grant a one-time, limited waiver of its procedural rule requiring that applicants seeking discounts on pre-existing contracts submit an FCC Form 470 at least 28 days prior to filing an FCC Form 471. The limited waivers described in this Order apply only to the specific Commission rules and USAC procedure described in this Order, for affected applications for which commitments or disbursements were made during the first funding year, as identified by USAC.

²² These providers are distinguishable from providers who know, or should have known, that the services they provided were not eligible for support or, in the case of non-carrier providers, that they were ineligible for support for discounts on telecommunications services. In any event, we note that, in the Commission's companion *Statutory Adjustment Order* released today, we conclude that we have no discretion to waive violations of such statutory requirements.

²³ 47 C.F.R. §§ 54.504(a), 54.504(b)(4), and 54.504(c).

²⁴ 47 C.F.R. § 54.507(g)(1)(iii).

IV. CONCLUSION

14. In sum, for the reasons described above, we conclude that the limited waiver of the Commission's rules described in this Order, as well as USAC's waiver of its procedural requirement, applied only to first-year funding commitments or disbursements described herein, will best serve the public interest.

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, and 303(r), and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Order IS ADOPTED. IT IS FURTHER ORDERED that any applicants covered by this Order that did not use their discounts on non-recurring services in full by September 30, 1999, pursuant to section 54.507(b)(2) of the Commission's rules, ARE GRANTED a waiver of that deadline for a period of 180 days from the date of release of this Order.

16. IT IS FURTHER ORDERED that the Universal Service Administrative Company SHALL WAIVE, on a limited basis as set forth in this Order, the procedural requirement described herein.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary